

Senate to support this flag amendment.

The vast majority of our citizens support amending the Constitution to protect our Nation's flag. Even then, this amendment just says it gives the right to the Congress to do that. To these citizens and elected officials, protecting the flag as the symbol of our national unity and community and utilizing the constitutional amendment process to do so is no trivial matter.

Sitting in our gallery today are people who put their lives on the line to defend our flag and the principles for which it stands. These are the fortunate ones who were not required to make the ultimate sacrifice like my brother was in the Second World War, and like my brother-in-law was in Vietnam. Every one of these people—like tens of thousands of American families across our country—have traded the life of a loved one for a flag, folded at a funeral. Let's think about that trade—and about the people who made it for us—before deciding whether the flag is important enough to be addressed in the Senate.

Given the great significance of the flag, it is not surprising that support for the flag amendment is without political boundaries. It is not, as some suggest, a battle between conservatives on one side and liberals on the other. Indeed, the flag amendment transcends all political, racial, religious, and socioeconomic divisions. This is consistently reflected in national polling, in resolutions to Congress from 49 State legislatures requesting Congress to send the flag amendment to the States for ratification, and in the support of a bipartisan supermajority of the House of Representatives both last year and during the 104th Congress.

Is this overwhelming support for the flag amendment, as manifested through polling and through the actions of State and national legislatures, frivolity? Are we trivializing the Constitution, when a vast majority of Americans speaking for themselves or through elected representatives seek to utilize the article V amendment process, itself constructed by our Founding Fathers to right the wrongs of constitutional misinterpretation? Are we irresponsible if we simply restore the law as it existed for two centuries prior to two Supreme Court decisions, which were 5-4 decisions, hotly contested decisions? Does the principle of "government by the people" end where the self-professed "experts" convince themselves that the concerns of the overwhelming majority of ordinary citizens and their representatives are not important?

Is the Constitution, which establishes processes for its own amendment, wrong? I say it is the Constitution which establishes processes for its own amendment, and it is right. It says that the Constitution will be amended when two-thirds of the Congress and three-fourths of the States want to do so. It does not say that this procedure

is reserved for issues that some law professors think are important, or issues that would crumble the foundations of our great Republic.

If "government by the people" means anything, it means that the people can decide the fundamental questions concerning the checks and balances in our Government. The people can choose whether it is Congress or the Supreme Court that decides whether flag desecration is against the law.

I urge colleagues to think hard about what they consider to be "important" before they conclude that the Senate should ignore the people and what they think is important and what should be considered important before they conclude that the Senate should ignore the people's desire to make decisions about the Government which governs them. The flag amendment is the very essence of "government by the people" because it reflects the people's decision to give Congress a power that the Supreme Court has taken away. This question is very important. I urge my colleagues not to think that this body is above listening to the vast majority of citizens of this country who want to give Congress the ability to determine whether and how to protect the American flag.

People should not say that there are more important issues than this one. This issue involves the very fabric of our society, what we are all about, and what our children, we hope, will be all about. This issue is very important. Anybody who thinks otherwise is trivializing this very important issue and the 80 percent of the American people who are strongly for it. The other 20 percent are not strongly against it; only a small percentage of those are. The rest of them just don't know or don't care.

You should have been with those seven Congressional Medal of Honor recipients, Miss America, and a whole raft of other veterans outside as we talked about why this amendment is important.

Mr. President, I yield the remainder of my time.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until the hour of 2:16 p.m.

Thereupon, at 12:39 p.m., the Senate recessed until 2:16 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. INHOFE).

FLAG DESECRATION CONSTITUTIONAL AMENDMENT—Resumed

AMENDMENT NO. 2889

The PRESIDING OFFICER. We now have 4 minutes equally divided under the McConnell amendment No. 2889, S.J. Res. 14.

The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, we all despise those who desecrate the

flag. The issue before the Senate today is how we should deal with that problem.

In the late 1980s, the Congress passed a statute designed to prohibit this vile practice. It was struck down by the Supreme Court on First Amendment grounds. For the last several years we have had proposals in the Senate to amend the Bill of Rights in order to prohibit flag desecration despite the First Amendment. However, I think we should be very reluctant about amending the Bill of Rights.

Therefore, I have offered the amendment which we will be voting on shortly. It takes a new a statutory approach that I am confident would be upheld by the Supreme Court. Simply put, my alternative approach protects the flag by prohibiting three kinds of desecration. First, desecration of the flag that incites violence or breach the peace. Second, desecration of a flag belonging to the United States government. Third, desecration of a flag stolen from someone else and destroyed on government land. Anyone who engages in any of this kind of reprehensible behavior would be subject to fines of up to \$250,000 and/or imprisoned for up to 2 years. I think this is a better approach than tinkering with the Bill of Rights for the first time in 200 years.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I generally support the distinguished Senator from Kentucky on all campaign finance reform issues because I think he is one of the most learned people, if not the most learned person in this area and on many other occasions. On this issue I cannot.

I predicted back in 1989 it was unconstitutional when they passed the statute, which passed overwhelmingly by a lot of people who, today, when this amendment is finally voted upon, will vote against it. In other words, they passed the statute that would do what this amendment would allow the Congress, if it so chooses to do, to do.

It seemed illogical to me they are unwilling to do what really has to be done because we have had two statutory attempts to resolve the problem of physical desecration of our beloved American flag. Both times I predicted it was unconstitutional under the Supreme Court's decisions, and both times they were held to be unconstitutional. So a statute is not going to do the job.

In spite of good intentions, the only way we can resolve this problem and do it effectively without taking anybody's rights away is to do what we are doing—not passing a constitutional amendment that prohibits physical desecration of the flag. We are passing a constitutional amendment that gives the Congress a coequal status with the judiciary, two coequal branches of Government to have the right to determine what to do with regard to the flag. That is what we intend to do.

I hope our colleagues will vote against this amendment because it